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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Promotion and protection of human rights, including ways and means to promote the human rights of migrants

## Report of the Secretary-General

*Summary*

The present report is submitted pursuant to General Assembly resolution 67/172 on the protection of migrants. In that resolution, the Assembly requested the Secretary-General to submit to it at its sixty-eighth session a report on the implementation of the resolution, including an analysis of how a human rights perspective could enhance the design and implementation of international migration and development policies.

Written submissions were received from States, intergovernmental organizations and non-governmental organizations.

The report considers the components of a human rights-based approach to migrants and migration, including from the perspective of the post-2015 development agenda, contains an analysis of how a human rights perspective can enhance the design and implementation of international migration and development policies and provides examples of recent practice in integrating a human rights perspective in the design and implementation of migration and development policies.

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# I. Introduction

1. In its resolution 67/172, the General Assembly requested the Secretary-General to submit to it at its sixty-eighth session a report on the implementation of that resolution, including an analysis of how a human rights perspective could enhance the design and implementation of international migration and development policies.

2. Written submissions were received from States, intergovernmental organizations and non-governmental organizations in response to a note verbale from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Secretary-General requesting information on the implementation of resolution 67/172.[1]

3. Section II of the present report contains an analysis of the components of a human rights-based approach. Section III considers a human rights-based approach to migrants and migration within the post-2015 development agenda. Section IV contains an analysis of how a human rights perspective can enhance the design and implementation of international migration and development policies. Section V provides examples of recent practice in integrating a human rights perspective in the design and implementation of migration and development policies, highlighting in this regard challenges as well as best practice. Section VI provides conclusions and recommendations.

4. In the outcome document of the United Nations Conference on Sustainable Development, entitled "The future we want", the Conference called upon States to promote and protect effectively the human rights and fundamental freedoms of all migrants regardless of migration status, especially those of women and children, and to address international migration through international, regional or bilateral cooperation and dialogue and a comprehensive and balanced approach, recognizing the roles and responsibilities of countries of origin, transit and destination in promoting and protecting the human rights of all migrants, and avoiding approaches that might aggravate their vulnerability.[2]

5. The linkages between migration, migrants, human rights and development are intricate and multifaceted. Contemporary migration is an increasingly complex phenomenon. Technological advances have enabled faster travel and the rapid spread of information through the Internet and social media. Rising inequalities, demographic changes and global labour markets often draw migrants to work in gruelling and precarious conditions. The motives for undertaking migration are frequently many-sided and can change, particularly as migrants make long and often difficult journeys to countries of destination. Insufficient opportunities to migrate legally add to the compulsion of migrants to rely on smugglers to facilitate their movement and can exacerbate the vulnerability of migrants to traffickers and other forms of exploitation.

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[1] The text of most submissions received can be found on the website of the Office of the United Nations High Commissioner for Human Rights; available from www.ohchr.org/EN/Issues/Migration/Pages/HLD2013.aspx.

[2] United Nations System Task Team on the Post-2015 United Nations Development Agenda, *Realizing the Future We Want for All: Report to the Secretary-General* (New York, June 2012).

6. As human mobility has increased and become more global, the traditional distinctions between voluntary and forced, regular and irregular, and temporary, seasonal, long-term and permanent migration have become less clear-cut. This leads to an increasingly compelling argument that the rights of all migrants should be addressed in a holistic way. Almost half of the total international migrant population consists of women and girls, many of whom are migrating on their own account. An estimated one in eight migrants is between the ages of 15 and 24.[3] In the process of migration, children, youth, women and men all face challenges specific to their particular situation.

7. In that context, it is important to note that migration is a fundamentally human process involving the often precarious movement of some 215 million people. It is not merely an anonymous megatrend. At the same time, migration is an important economic and social phenomenon of the twenty-first century, and as such it has a defined development impact: on the human development of migrants and their families and on the development of countries of origin, transit and destination. In framing a discussion about migration and development, it is important that the human rights perspective be placed at the centre and not be overlooked. The migration and human rights agenda is an important lens, crucial in its own right as well as in the context of the migration and development arena, because human rights are intrinsic to all human beings, regardless of their instrumental value as units of labour or agents of development.

8. The development benefits of protecting the human rights of migrants are now beyond question. There is increased recognition that migration policies at the national, regional and international levels should take into account the essential contributions that migrants make to societies and economies and uphold the legal obligations voluntarily assumed by States to protect, promote, respect and fulfil the human rights of all migrants.

## II. A human rights-based approach

9. A human rights-based approach aims to support better and more sustainable development outcomes by analysing and addressing the inequalities, discriminatory practices and unjust power relations that are often at the heart of development problems. Such an approach is normatively based on international human rights standards and operationally aimed at promoting and protecting human rights. Under a human rights-based approach, development efforts are anchored in a system of rights and corresponding State obligations established by international law.

10. A human rights-based approach focuses on the development of the capacity of duty bearers to meet their obligations and of rights holders to claim their rights. Such capacities include skills, abilities, resources, responsibilities, authority and motivation.

11. A human rights-based approach gives importance not only to outcomes but also to processes. In order to ensure rights-based processes and outcomes, it is

[3] Department of Economic and Social Affairs, Population Division, "International migration in a globalizing world: the role of youth", Technical Paper, No. 2011/11 (United Nations, New York, 2011).

essential to have functioning information systems and valid, relevant and disaggregated data in order to identify vulnerable groups and their diverse needs.

12. The principles underlying a human rights-based approach in the context of migration are the following:

(a) *Universality and inalienability*. All people, including migrants, are entitled to universal and inalienable human rights;

(b) *Indivisibility*. All human rights (whether civil, cultural, economic, political or social) are indivisible and inherent to the dignity of every human person, including migrants;

(c) *Interdependence and interrelatedness*. The realization of one right often depends, wholly or in part, upon the realization of other rights;

(d) *Participation and inclusion*. Migrants are entitled to active, free and meaningful participation in decisions that directly affect them;[4]

(e) *Equality and non-discrimination*. States should address direct and indirect discrimination against and unequal treatment of migrants in laws, policies and practices;

(f) *Accountability*. States should ensure transparency in the design and implementation of their migration policies and must ensure that migrants have access to mechanisms of redress and remedies. There are many ways to address accountability, including:

(i) Ratification of international human rights treaties and incorporation of standards in domestic law;

(ii) Judicial and quasi-judicial mechanisms, for example, taking migration issues into consideration in court rulings, as well as constitutional and administrative reviews, national human rights commissions and ombudsmen;

(iii) Administrative and policy mechanisms, for example, reviews of the human rights impact of migration policies and strategies;

(iv) Political mechanisms, for example, parliamentary processes, monitoring and advocacy by non-governmental organizations;

(v) Reporting to human rights treaties on the situation of migrants.

13. A human rights-based approach moves development analysis and programming from the amorphous realm of charity to the more measurable and enforceable realm of obligation.

[4] The Special Rapporteur on extreme poverty and human rights stated that "Effective participation can build capacity and rights awareness. It allows those living in poverty to see themselves as full members of society and autonomous agents rather than subjects of decisions taken by others who see them as objects of assistance or mere statistics." (A/HRC/23/36, para. 22).

## III. A human rights-based approach to migrants and migration within the post-2015 development agenda

14. The United Nations High Commissioner for Human Rights has noted that the litmus test of development is the degree to which any strategies and interventions satisfy the legitimate demands of the people for freedom from fear and want, for a voice in their own societies and for a life of dignity.

15. A human rights-based approach to development, as defined by the United Nations system, is people-centred, non-discriminatory, inclusive and accountable and reduces inequality. In 2012, the United Nations System Task Team on the Post-2015 Development Agenda recommended three fundamental principles for the post-2015 development agenda, namely human rights, equality and sustainability.[5] It called for the new development agenda to be aligned with human rights standards and accountability mechanisms.

16. Neither growth nor poverty reduction are sustainable without giving attention to inequality and addressing pervasive discrimination. Economic growth is not in itself an adequate measure of development. Economic growth, where accompanied by significant structural inequalities and repression, is neither sustainable in the long term nor morally acceptable in the present.[6] The concept and practice of development must include considerations of productive employment and decent work for all, education and health care, adequate housing, food, a voice in public decisions, free, active and meaningful participation in public affairs, fair institutions of justice, and a sense of personal security.

17. Development is therefore fundamentally about removing barriers and expanding choices. As the United Nations High Commissioner for Human Rights has noted, "It should by now be seen as axiomatic that no society can develop to its true potential when entire sectors of that society are blocked from contributing by legal, physical, social or political barriers".[7] The inclusion of all migrants in development is not only a normative obligation rooted in the prohibition of discrimination but also a practical imperative for effective development strategies. Only if conceived in terms of human rights will migration be able to fulfil its potential as an enabler of human development.

18. Migrants are not commodities. Development interventions should not push migrants to migrate as "agents of development" or development workers, particularly without adequate protection of their human and labour rights. States, not migrants, are responsible for proper national planning and strategies to address development.

19. Nor should the post-2015 development agenda treat migration solely as a global phenomenon and an enabler of development, without considering the

[5] United Nations System Task Team on the Post-2015 United Nations Development Agenda, *Realizing the Future We Want for All: Report to the Secretary-General* (New York, June 2012).

[6] United Nations System Task Team on the Post-2015 United Nations Development Agenda, "Towards freedom from fear and want: human rights in the post-2015 agenda — thematic think piece: OHCHR" (May 2012), p. 4.

[7] See open letter of 6 June 2013 on human rights in the post-2015 agenda of the United Nations High Commissioner for Human Rights. Available from www.ohchr.org/Documents/Issues/MDGs/HCOpenLetterPost2015.pdf.

development situation of the more than 215 million migrants, many of whom live and work in precarious and inequitable conditions. Development targets that pay no attention to which groups are being left behind are just like economic growth targets: they can be met without having any real impact on ensuring a more equal and just world.[8]

20. The United Nations Development Programme's *Human Development Report 2009* noted that barriers to mobility are especially high for people with low skills, despite the demand for their labour in many rich countries.[9] Many migrants move, live and work in unequal, discriminatory and marginalized conditions, unable to benefit from development. Thus, the situation of migrants should be clearly disaggregated in future development goals, targets and indicators. The post-2015 development agenda is an opportunity to enhance the knowledge base on the human rights dimensions of migration, particularly in relation to more vulnerable migrants.

21. It is important that the post-2015 development agenda look to the world of work as a key site of interaction between migration and development, acknowledging particularly the vulnerability of low- and middle-skilled workers and migrant workers in an irregular situation. But it should also look beyond the workplace and recognize that migration interacts with development in other important public and private spaces, including in the home, in the communities that migrants leave and those that they join, and in education and cultural life. Appropriate policies should thus be explicitly aimed at alleviating inequalities in relation to migrant children and migrant women at risk, older migrants and migrants with disabilities, as well as migrants in irregular situations; ensuring the access of all migrants to essential services such as health care, education, social security, housing, water and sanitation. The Committee on the Rights of the Child has observed that policies, programmes and measures to protect children from poverty and social exclusion must include children in the context of migration, regardless of their status.[10]

22. The post-2015 development agenda should be a universal agenda, one that does not make arbitrary distinctions between nations but focuses on human beings and their human rights. In the context of contemporary migration, traditional distinctions between countries of origin and destination are beginning to be less relevant. Emerging economies and middle-income countries are increasingly host to significant migrant populations, and South-South migration is as important as the movement of people from developing to developed countries. Traditional destination countries are seeing their citizens migrate in search of opportunities, and traditional countries of origin have become transit and destination countries.

23. Accordingly, the post-2015 development agenda should apply to all countries and to all people; it should recognize that migrants can and often do live in poverty, marginalized and discriminated against in all host and transit countries. Migration

[8] Statement by 17 special procedures mandate holders of the Human Rights Council on the post-2015 development agenda, "Grounding development priorities in human rights: incentives to improve equality, social security and accountability", 21 May 2013. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13341&LangID=E.

[9] *Human Development Report 2009: Overcoming Barriers — Human Mobility and Development*, (United Nations publication, Sales No. E.09.III.B.1), p. 2.

[10] Committee on the Rights of the Child, "Report of the 2012 day of general discussion: the rights of all children in the context of international migration" (February 2013), para. 88.

policies made in countries of destination can have lasting impacts on the development and human rights of migrants' families and communities in their country of origin. When the poorest migrate, they often do so under conditions of vulnerability that reflect their limited resources and choices. In many countries, accordingly, irregular, temporary and low-skilled migrants (and their children) are significantly more likely to be living in poverty and inequality than citizens of that country.

## IV. A human rights perspective on international migration and development policies

24. A "migration and development" policy is difficult to define. In the context of human development (understood as the expansion of people's freedoms to live their lives as they choose), such a policy would mean any measure designed to address migration that has an impact on the human development of migrants. As noted above, both migration and development are fundamentally human processes.

25. The benefits and the added value of utilizing a human rights based-approach in the design and implementation of migration and development policies are twofold: (a) the intrinsic rationale, acknowledging that a human rights-based approach to migration is the right thing to do, morally or legally; and (b) the instrumental rationale, recognizing that a human rights-based approach leads to better and more sustainable human development outcomes for migrants and their families, as well as, more broadly, societies and States. Importantly, a human rights-based approach seeks to build upon and learn from, rather than discard, the lessons of good development practice and strengthen arguments for their more consistent implementation.

26. A human rights-based approach to migration policy is premised on States voluntarily assuming universal standards and principles. Specific results, standards of service delivery and conduct and good practices are derived from universal human rights instruments. Further guidance on and elaboration of those standards and principles have been provided by the human rights mechanisms. This normative framework constitutes a firm foundation on which to design and implement migration policies.

27. The principles of equality and non-discrimination lie at the heart of international human rights law and connect directly to the principle of universality, which affirms that every human being has fundamental rights. The Universal Declaration of Human Rights recognizes that "all human beings are born free and equal in dignity and rights" (art. 1). All migrants, including those in an irregular situation, have the same human rights, including economic, social and cultural rights, as does anyone else; all restrictions including those based on nationality or immigration status must pursue a legitimate aim and be proportionate to the achievement of that aim. That is the clear message of the international human rights framework.

28. The human rights framework therefore requires States to contemplate a range of practical measures in order to fulfil their obligations, including the dismantling of barriers that obstruct the full participation of everyone, including migrants, in economic and social life. Other measures could include ensuring that national

strategies or plans of action in the areas of social security, health care or education take into account the situation and needs of migrants.

29. States are required to address direct and indirect discrimination when a law, policy or practice appears at first to be neutral but has a disproportionate impact on the rights of migrants. Imposing a rule that children enrolling in school must show a birth certificate, for example, discriminates against irregular migrant children who do not possess such documents or cannot easily obtain them. Fee-based medical systems that have the effect of excluding migrants living in poverty from essential health care might also be discriminatory.

30. Through dedicated attention to the most vulnerable, marginalized and excluded, a human rights-based approach to migration and development policies can ensure that no group is disregarded or left benind. In that regard, all migrants can be vulnerable because they are outside the legal protection of their countries of nationality. Moreover, as strangers to a society, migrants are often unfamiliar with the national language, laws and practice and can lack social networks. This makes migrants less able than others to learn and assert their rights. Migrants in an irregular situation are particularly vulnerable, as they can be denied access to public services in law or may be unable to access such services in practice because they have a fear of detection.[11]

31. Using a human rights-based approach to govern its migration policy could mean that a State will not do something, such as subject an irregular migrant to indefinite detention due to immigration status. It could mean that a State will do something such as enact laws to enable migrant children to access primary education without discrimination. And it means that the State is required to take action when private actors, such as employers or landlords, abuse the rights of migrants.

32. On the other hand, migration policies that are designed and implemented with little regard for human rights imperatives risk having negative human rights impacts, in addition to being ineffective with regard to their migration governance goals. For example, management policies based exclusively on punitive and restrictive border controls without due regard for the labour market and other reasons for migrant arrival tend to have little impact on the absolute numbers of migrants entering the country but can have the negative effect of exposing migrants to human rights violations at or near international borders and can increase insecurity and abuse by encouraging the proliferation of human trafficking enterprises.[12]

33. A policy guided by a human rights-based approach takes a holistic view of its environment, taking into consideration the migrant and his or her family, the community in which migrants live and work, civil society, local and national authorities, and all relevant parts of the government. Such an approach lifts sectoral "blinkers" and facilitates an integrated response to migration, including its links to development.

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[11] Statement of the Global Migration Group on the human rights of migrants in irregular situation, September 2010, available from www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10396&LangID=E.

[12] See A/HRC/23/46, para. 83.

34. Such an approach helps to make the policy formulation process more transparent and empowers people and communities to hold accountable those who have a duty to act, ensuring effective remedies where rights are violated. It supports the monitoring of State commitments with the help of recommendations of human rights mechanisms and through public and independent assessments of State performance.

# V. Recent practice in integrating a human rights perspective in migration and development policies

35. In their contributions to the present report, Member States highlighted a range of measures that they had taken to integrate a human rights perspective into the design and implementation of their migration policies, including in relation to legislation, administrative and policy measures and bilateral and multilateral cooperation. The following section provides recent examples of such practice, highlighting in that regard challenges and best practice.

## A. Non-discrimination

36. Migrants often face discrimination and exclusion. In some countries, migration regulations explicitly discriminate against different groups of migrants, for example, by prohibiting low-skilled migrant workers from being joined by their family members, although family reunion is available to high-skilled migrants.

37. Some States have shown progress in ensuring non-discrimination. In Jordan, for example, legislative measures have been adopted, including amendments to the labour code in 2008 and 2010, to eliminate discrimination against women, broadening its scope of application to women migrant domestic workers and other groups of workers.

38. In Romania, community information campaigns have raised awareness of the issues faced by asylum seekers and migrants and have played an important role in fighting xenophobia and ensuring a better understanding of their situation.

39. In 2012, Montenegro adopted the new "Strategy for Improvement of the Position of Roma and Egyptians (2012-2016)" and an action plan linked to the strategy.

## B. Legislation

40. The design and implementation of specific policy measures in relation to migration and development can be supported by a rights-based legislative framework, including constitutional law, non-discrimination and employment acts, equal treatment laws and labour and migration laws.

41. The 2004 national migration law of Argentina contains standards to ensure full respect for human rights of migrants and their families. This legislation recognizes the right to migrate based on the principles of equality and universality and guarantees equal access for migrants and their families to social services, public property, health education, justice, employment and social security.

42. The 2008 Constitution of Ecuador mandates protection of migrants, regardless of status, recognizing the "right to migrate". Article 40 explicitly states that no person can be deemed illegal because of their migrant status.

43. The Constitution of Georgia guarantees that foreign nationals and stateless persons possess the same rights, liberties and duties as nationals. Migrants enjoy equal access to the health system and its benefits, including medical care and social services. However, those rights are not explicitly recognized for irregular migrants.

44. In Bosnia and Herzegovina, legislation stipulates the involvement of public employment services and youth employment regional councils in the design of temporary migration programmes.

## C. Cooperation on migration and development

45. Bilateral and multilateral cooperation, as well as coherence and cooperation within national governments and between governments and civil society stakeholders at the national and local levels can be an important element of a rights-based migration policy. Many States enter into memorandums of understanding and bilateral agreements with countries of destination, and it is important from a human rights perspective that such agreements are rights-based and are designed and implemented in a transparent and participatory process.

46. Migration, being a complex and multidimensional issue, is relevant to a range of ministries including those for labour, the interior, foreign affairs, child protection, health and education and ministries charged with monitoring human rights obligations. In Azerbaijan, through adoption of the "single window" principle, the State Migration Service serves as a unified governmental body to handle migration processes, thus enabling greater coherence among the different ministries engaged in the migration process. In Switzerland, multiple ministries and departments work together in a "whole of government" approach to migration. In Costa Rica, joint actions between the National Child Welfare Institute (PANI) and the National Bureau of Migration and Foreign Affairs (DGME) have been strengthened through the development of protocols for inter-institutional coordination for the protection of the rights of migrant children.

47. With the assistance of the United Nations Children's Fund, the South African Department of Social Development and the Zimbabwean Ministry of Public Service, Labour and Social Development have developed draft standard operating procedures for the tracing, reunification or alternative care placement of unaccompanied and separated children.

48. In Lebanon, a code of conduct providing guidance to recruiting agencies on promoting and protecting the rights of migrant domestic workers in the country was jointly developed and launched in 2013 by the Lebanese Ministry of Labour, the Syndicate of the Owners of Recruitment Agencies in Lebanon (SORAL) and Caritas Lebanon's Migrant Centre, in consultation with OHCHR and the International Labour Organization (ILO).

49. Sri Lanka has signed social security agreements with States in which Sri Lankan migrant workers are employed, such as Italy and Cyprus, to ensure the portability of social security entitlements and allow migrants workers to claim

pensions and other social security benefits from countries in which they have worked.

50. In the Latin American and Caribbean region, the Initiative for Sexual and Reproductive Health Care for Migrant Youths and Women promotes binational and cross-sectoral work between Argentina and Bolivia (Plurinational State of); Colombia and Ecuador; Costa Rica and Nicaragua; El Salvador, Guatemala and Mexico; and Haiti and the Dominican Republic. The Initiative, which is supported by the United Nations Population Fund, is improving migrants' access to sexual and reproductive health services and strengthening programmes for the prevention of sexually transmitted infections, HIV/AIDS and gender-based violence.

## D. Regularization

51. Regularization programmes can be an effective policy measure to address the extreme vulnerability of irregular migrants and thereby enable such migrants to achieve positive development outcomes.

52. The Agreement on Residency for Nationals of States Members of the Common Market of the South (MERCOSUR) was signed in 2002 and came into force in 2009. The Agreement guarantees that nationals from a country of MERCOSUR can acquire a temporary residence (and after two years, permanent residence) in any of the countries of the regional organization, and that such individuals are entitled to receive the same treatment as nationals, including in the labour market.

53. Regularization programmes have been adopted in Argentina (2007-2010), Brazil (2009), Chile (2007) and Paraguay (2011). The programme in Paraguay allowed the regularization of about 5,000 individuals who had entered the country irregularly prior to October 2010. It has been reported that the "Patria Grande" regularization programme of Argentina that granted either temporary or permanent residence to 560,131 people has brought significant development benefits to the host country.

## E. Training and information

54. An important element in enhancing the human rights implementation of policies lies in strengthening and expanding technical assistance and capacity-building to all migration-related State authorities, including immigration and border authorities, judges, prosecutors, tax officials, labour inspectors, social workers, teachers, health-care professionals and diplomats and staff members in embassies and consulates. The ILO Multilateral Framework on Labour Migration encourages States to provide effective enforcement mechanisms for the protection of migrant workers' human rights and provide training on human rights to all government officials involved in migration (guideline 8.3 of the Framework).

55. Azerbaijan and Bosnia and Herzegovina have undertaken various initiatives for training public officials on migration and trafficking in persons, including on the application of the provisions of the international human rights framework. Colombia provides training to its immigration authorities on provisions relating to human rights and migration, refugee law and trafficking in persons and smuggling of migrants. In Romania, immigration officials working in locations such as ports,

airports and border crossings benefit from training programmes on the practical application of human rights standards.

56. Training on legal standards regarding conditions of detention, rights and welfare of detainees and the asylum and legal processes available to detainees have been delivered for detention service providers, police officers and border guards in the European Union and a number of other States, including China (Hong Kong), Indonesia, Lebanon, Mexico, Pakistan, the United Republic of Tanzania and the United States of America.

57. Training programmes to inform migrants should not only warn of possible risks but also empower potential migrants by informing them about their rights. In Sri Lanka, initiatives undertaken by the State include training programmes by the Bureau of Foreign Employment (SLBFE) for registered migrants prior to departure, and the establishment of eight pilot regional migrant information and service desks. Jordan has implemented informative media campaigns, and Tajikistan has developed awareness-raising campaigns and training to protect and support migrant workers who leave the State.

58. The International Organization for Migration (IOM) assists labour migrants to understand the risks associated with overseas employment and their rights through pre-departure orientation and migrant resource centres. In Bangladesh, IOM has supported training for labour attachés and, with ILO, provides training for labour inspectors in Mauritania.

## F. Child protection

59. The Committee on the Rights of the Child has noted that States should ensure that the rights enshrined in the Convention on the Rights of the Child are guaranteed for all children under a State's jurisdiction, regardless of their own or their parents' migration status, and address all violations of those rights.[13] The capacity of national social protection systems to prevent and address all situations of vulnerability directly or indirectly related to migration should be strengthened and children affected by migration and their families should be a specific target group of social policies and programmes, regardless of migration status and without discrimination.

60. In Belgium, a specialized unit for unaccompanied children has been established in the Immigration Office, with the responsibility to grant residence documentation, conduct family searches and ensure that any family reunification is in the best interest of the child. In addition, specialized centres have been developed for unaccompanied minors. Several other States, including Guatemala, Romania and Ukraine, are taking similar steps to provide protection to unaccompanied children.

61. Birth registration is a fundamental human right and the foundation for the realization of other rights, including heath care, social benefits and education. In Thailand, the right to birth registration of children of irregular migrant parents is recognized in the Civil Registration Act. In addition, the 2008 Nationality Act

[13] Committee on the Rights of the Child, "Report of the 2012 day of general discussion: the rights of all children in the context of international migration".

provides for the naturalization of specific categories of persons including children of irregular immigrants born in Thailand before 1992.

62. In the Republic of Moldova, a national action plan on the protection of children left without parental care for the period 2010-2011 addressed the multiple aspects of vulnerability of children "left behind". As of 2012, the Ministry of Labour, Social Protection and Family was carrying out a census of such children.

## G. Access to services and social security

63. Some host countries restrict migrants' access to health care and other services on the grounds that they need to protect their welfare systems from abusive claims and deter migration. Human rights treaty bodies and experts have questioned that claim on both ethical and factual grounds.[14] Even migrants who do not participate directly in official social protection often contribute to financing social protection schemes and programmes by paying indirect taxes. Some countries directly prohibit migrants from access to services, while in other countries informal or hidden barriers result in a lack of access. Immigration control practices in or near institutions that provide services, as well as the lack of a firewall between service providers and immigration authorities often results in denial of access to essential services.

64. In Argentina, Trinidad and Tobago and Uruguay, all migrants enjoy the same access to social services as do nationals. Other States, including Belgium, France, Italy and the Netherlands, have implemented administrative systems to give irregular migrants access to a range of health services. In Chile, a decision of the Ministry of Health ensures access to emergency medical care for irregular migrants and access to health care for pregnant women and children in an irregular situation. The right to equal access of all children to health care is recognized in Greece, Portugal, Romania and Spain.

65. The fundamental right of all children to education, regardless of their legal status, is recognized in Argentina, Belgium, Chile, Italy, Spain, Thailand, the Netherlands and Uruguay. In France, there is a ministerial circular to the same effect. The migration law of Argentina explicitly states that education authorities shall provide to migrants guidance and counselling on the regularization procedure.

66. A project on Integrated Community Development for Livelihoods and Social Cohesion in Mae Hong Son province, Thailand, aims to enhance livelihood opportunities and promote social cohesion for regular and irregular migrants. The integrated community development methodologies focus on livelihood generation, developing the capacity of local government and natural resource management.

67. Recommendation No. 202 concerning national floors of social protection adopted by the International Labour Conference provides four basic social security guarantees to be extended to all migrants. From 2009 to 2011, ILO supported the Republic of Moldova in developing institutional capacities for planning and implementing social security coverage for migrants and bringing into effect social security bilateral agreements.

[14] See, for example, A/HRC/14/30, para. 22.

## H. Decent work

68. Many migrants, in particular low-skilled workers or migrants in a temporary or irregular situation, are vulnerable to exploitation and abuse in the context of employment. Migrant workers should enjoy equal treatment and conditions of work, regardless of their migratory status. While nationals or particular categories of non-nationals may have privileged access to the labour market, once a migrant is working he or she is entitled to basic protections regardless of legal status. Tying migrants to specific employers encourages labour exploitation, prevents migrants from finding better opportunities and is therefore both undesirable from a rights-based perspective and economically inefficient. In some countries, legislation requires migrants to obtain the employer's permission to leave the country or change employer, discouraging migrants from leaving exploitative working conditions without risking detention, deportation and loss of income. While some countries have made progress on implementing standard contracts for migrant workers, many do not include such important guarantees as a minimum salary or improved regulation of exploitative recruitment agencies. Some migrants, such as domestic workers, are often explicitly excluded from the protection of domestic labour law.

69. In Sri Lanka, migrant workers are required to register prior to departure, and there is a requirement that service contracts be signed in the presence of officers from the national Bureau of Foreign Employment and be approved by Sri Lankan missions overseas.

70. Azerbaijan's law on labour migration states that if the contract of employment is terminated for reasons not depending on the migrant worker, all expenses related to the return of the migrant and his/her family shall be reimbursed by the employer.

71. In Taiwan Province of China, employers are prohibited from retaining the identity documents of migrant workers, such as their passports or residence permits. Employers may not withhold their pay or property, commit bodily harm, or violate any of their other rights. Employers who engage in such conduct may be prohibited from employing migrant workers.

72. Domestic workers in the countries of the Gulf Cooperation Council are entitled to a unified standard contract including a weekly day off, the right to remain in possession of their passports and traceable electronic monthly salary payments into bank accounts. In 2013, the Philippines and Saudi Arabia signed an agreement to protect the labour rights of migrant domestic workers from the Philippines, including setting up a 24-hour helpline.

73. In Mauritius, migrant workers enjoy prescribed salary levels and other terms and conditions of employment equal to local workers and have the right to join and form a trade union. Since 1999, a special migrant workers unit set up within the Ministry of Labour carries out workplace inspections and receives and acts on complaints on behalf of migrant workers, in a language understood by the migrant.

## I. Criminalization, detention and detection

74. While policies of criminalization and exclusion are unlikely to be an effective deterrent to irregular migration, they can have harmful consequences, not only on

the human rights and well-being of individual migrants but also on relations between host communities and migrants in that society. That will ultimately have harmful consequences for human development. There is a growing body of evidence that administrative detention does not deter irregular migration, and despite the worldwide introduction of increasingly tough detention policies over the past 20 years, the number of irregular arrivals has not decreased.[15]

75. Since 2009, a number of States have introduced legislation or policies to end immigration detention for certain categories of migrants, including Argentina, Belgium, Brazil, Canada, Hungary, Japan, Panama, South Africa, Sweden and Venezuela (Bolivarian Republic of). Recently, Japan provisionally released children from immigration detention and introduced a policy to prevent their detention in the future. It has also reduced the country's overall numbers of detained migrants, and developed working partnerships with local non-governmental organizations.

76. Several States have established limits on the time authorities are allowed to detain a migrant for administrative purposes, including the Czech Republic, France, Hungary, Ireland, Italy, Luxembourg, Morocco, the Netherlands, Nicaragua, Oman, Portugal, Slovakia, Spain, Sweden and Zambia.

77. Some States have applied alternative measures to detention for irregular migrants, with some explicitly acknowledging that particularly vulnerable groups, such as children, should not be detained. In Spain, the immigration detention of children is prohibited by law; such children are to be referred to services for the protection of minors and may be detained only with their parents in facilities that are appropriate for families.

78. Allowing migrants to retain their liberty and security of person while residing within the host community has proven to be one of the most effective and low cost approaches in alternatives to detention.[16] Migrants can be referred to community-based support models, such as shelters, where they have access to legal assistance, medical care, educational opportunities and psychosocial support.

79. All European Union countries, except for Cyprus and Malta, have legislated that alternatives to detention must be pursued prior to any decision for detention. The 2004 immigration law of the Bolivarian Republic of Venezuela prohibits detention and provides several alternatives that may be adopted within a deportation procedure, including reporting regularly to the competent authority, settling in a given locality during the administrative procedure and providing a financial security guarantee (for which the migrant's economic condition must be taken into account).

80. Risk assessment tools have been developed to assist immigration officers in making an informed decision on the necessity of immigration detention. Such risk

[15] See A/HRC/20/24, para. 8. There has been considerable momentum in recent years calling on States to explore effective alternatives to immigration detention, based, inter alia, on the principle of proportionality in international law, which requires detention to be approached as a measure of last resort. See the report of the Working Group on Arbitrary Detention (A/HRC/13/30 and Add.1-3). See also the proceedings and summary conclusions of the Office of the United Nations High Commissioner for Human Rights-Office of the United Nations High Commissioner for Refugees Global Round Table on Alternatives to Detention of Asylum Seekers, Refugees, Migrants and Stateless Persons, held in Geneva on 11 and 12 May 2011 (available from www.ohchr.org/EN/Issues/Migration/Pages/Roundtable.aspx).

[16] International Detention Coalition, "International immigration detention, trends and good practice", briefing paper (July 2013).

assessment tools limit unnecessary detention, improve consistency in decision-making and ensure that particularly vulnerable and low-risk individuals are never at risk of immigration detention. In the United States, migrants undergo an operational screening process in which they are screened using a nationwide risk assessment tool.

81. Under the international human rights framework, irregular entry or stay is an administrative offence and not a crime against persons, property or national security.[17] The guidance of human rights mechanisms is that States should not criminalize illegal entry or stay, including in order to reduce unnecessary detention.

82. In some countries, responses to human trafficking and smuggling of migrants have gone beyond criminal justice interventions to more comprehensive, rights-based and holistic policies. Through its *International Framework for Action to Implement the Smuggling of Migrants Protocol*, the United Nations Office on Drugs and Crime assists States in implementing the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, emphasizing that respecting the human rights of migrants is a means by which smuggling of migrants can be prevented and combated.

83. Certain practices to apprehend migrants in an irregular situation and the exchange of personal data between service providers, such as hospitals, school and civil registries, and law enforcement agencies disproportionately affect the human rights of migrants. The European Union Agency for Fundamental Rights has, together with States members of the European Union, the European Commission and non-governmental organization, developed a document of "dos and don'ts" providing guidance in that regard.[18]

## J. Monitoring of and access to justice

84. The rights of migrants will remain vulnerable to abuse unless they enjoy protection under the law and are able to demand accountability. The human rights framework directs States to provide legal redress through quasi-judicial or judicial mechanisms to enable migrants to enforce their rights against State and non-State actors, without fear of detention and deportation.

85. Irregular migrant status can be a direct obstacle to access to justice. In some States, irregular migrants are not entitled to the labour rights guaranteed by the employment legislation because the contract of employment is deemed to be illegal in the absence of an employment permit. In other cases, irregular migrants cannot benefit from the right of legal representation, as notary offices would not issue a power of attorney. Migration status can also be an indirect obstacle to access to justice. Migrants in an irregular situation are often reluctant to approach public authorities to access health-care services, send their children to school, denounce crimes and human rights abuses or seek redress, for fear of losing their employment or being reported, sanctioned or expelled.

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[17] A/HRC/20/24, para. 13.

[18] European Union Agency for Fundamental Rights, "Apprehension of migrants in an irregular situation: fundamental rights considerations" (2012). Available from http://fra.europa.eu/en/news/2012/fundamental-rights-considerations-apprehending-irregular-migrants.

86. In the United States, legislation provides temporary legal migration status to migrants who are victims of certain crimes, including human trafficking.

87. In Georgia, legislation on the status of foreigners and stateless persons provides that migrants have the right to apply to courts and other State bodies in order to protect their persons, property and other rights and sets out that such individuals shall enjoy the same procedural rights as citizens. In Guatemala, every individual, regardless of his or her nationality, including migrants, has access to the courts of law and the labour and social security courts. In addition, migrants have access to the complaint mechanisms of the Office of the Human Rights Advocate.

88. Several measures have been adopted in Mexico to guarantee access to justice for irregular migrants, such as the creation of the public prosecution service for migrants in the state of Chiapas, as well as the protocols adopted by the National Institute of Migration in 2010 for the identification and assistance of migrants who are victims of crime.

89. In relation to immigration detention, some States have ensured that independent, regular detention monitoring is conducted at the national level. For example, such monitoring is conducted by the national human rights institutions of Fiji, Honduras, Mali, Mauritius, Mexico, Nicaragua, Nigeria, South Africa, Switzerland and Uganda, and the ombudsmen and independent commissions of Ecuador, Hungary, the former Yugoslav Republic of Macedonia, Maldives, Montenegro, the Netherlands, New Zealand, Poland, the Republic of Moldova, Senegal, Serbia, Slovenia, Spain, Sweden and the United Kingdom of Great Britain and Northern Ireland.

# VI. Conclusions and recommendations

## A. Conclusions

**90. A human rights-based approach to the design and implementation of migration policies means that States are obliged to formulate and scrutinize all such policies by measuring against human rights standards and benchmarks, and to strive to ensure that they are responsive to the human rights of all migrants, with a particular focus on the most vulnerable. There is increasing evidence that a human rights approach to migration policy leads to better and more sustainable human development outcomes. Educated, healthy and empowered migrants are better able to lift themselves and their families out of poverty and contribute to the wider community and economy in countries of origin, transit and destination.**

**91. When governed by rights-based policies, therefore, international migration can be an empowering experience, with development benefits for migrants, their families and their communities. Conversely, the absence of a human rights perspective can lead to policy formulation that responds more to populist, even xenophobic, demands, unrealistic policy goals or to flawed assumptions rather than to rational and evidence-based debate on the human costs and benefits of migration and measures to ensure protection of the human rights of migrants.**

92. **Migration policies often do not recognize, for example, that migrant women are not always vulnerable and passive migration actors, or that migrant children are very often actors in (and not necessarily victims of) their own migration. Migration policies can be mistakenly premised on assumptions that migrants pose a criminal and security threat, rather than taking into account the reasons why they are arriving and working in host countries, their economic and social contributions and their need for specific development interventions.**

93. **In order to enhance the design and implementation of migration policies, States and other stakeholders should seek to improve the human rights-based governance of migration at the national, regional and international levels.**[19]

94. **There is a significant knowledge gap in relation to migration and human rights, which can limit the ability of States to design and implement rights-based migration policies. Human rights-based indicators are necessary in order to build capacity to develop such policy at the national and local levels, and to develop tools for monitoring, implementation, capacity-building and advocacy. A human rights perspective can help to reorient the collection of data to go beyond traditional sources and to analyse such sources as population statistics or economic indicators with an eye on vulnerability, discrimination and exclusion.**

## B. Recommendations

95. **The Secretary-General welcomes the information received from Member States concerning legislation, regulations and policies to strengthen the protection of the human rights of all migrants and makes the following recommendations:**

(a) **Encourages States to include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to protect the human rights of migrants;**

(b) **Encourages the Special Rapporteur on the human rights of migrants to continue to promote the protection of the human rights of migrants through dialogue with Member States;**

(c) **Encourages States to ratify all relevant international human rights instruments, in particular to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;**

(d) **Underlines that States have an obligation under the core international human rights instruments to protect the human rights of all**

[19] In December 2012, the Secretary-General tasked the Office of the United Nations High Commissioner for Human Rights, in consultation with the Global Migration Group and other United Nations system partners, to prepare an analytical report on migration and human rights in order to promote a strong focus on the human rights of migrants in the 2013 high-level dialogue on international migration and development to be held on 3 and 4 October 2013, and beyond. See Office of the United Nations High Commissioner for Human Rights, "Migration and human rights: improving human rights-based governance of international migration" (2013); available from www.ohchr.org/EN/Issues/Migration/Pages/MigrationAndHumanRightsIndex.aspx.

**individuals under their jurisdiction, regardless of their nationality or legal status;**

**(e) Recommends the adoption of comprehensive national plans of action, informed by international human rights standards, to strengthen the protection of the human rights of all migrants;**

**(f) Calls on States to take proactive positive measures to prevent and sanction discrimination against migrants, and to avoid their marginalization and social exclusion;**

**(g) Encourages States to ensure that all migrants, regardless of their legal status, have access to adequate health care, including preventive, curative and palliative health services, and protect their access to underlying determinants of health;**

**(h) Calls on States to recognize that everyone has the right to education, regardless of their or their parent's migratory status. The Secretary-General further encourages States to develop education strategies that strengthen the capabilities of marginalized communities as a whole, while specifically addressing the education needs of vulnerable migrants within such communities;**

**(i) Encourages States to establish firewalls and safeguards on information-sharing between public service providers, including health-care institutions and school administrators, and immigration authorities. Public service institutions should not be required to report or otherwise share data with immigration authorities, and guidance should be provided to institutions in that respect;**

**(j) Calls on States to ensure access to social security schemes by migrants, at a minimum when it is necessary to alleviate poverty and preserve human dignity, and to cooperate to enhance the portability of the social rights of migrants, including the rights of those in an irregular situation. The Secretary-General also encourages States to ensure equality of treatment in conditions of work between nationals and migrants, including those who are in an irregular situation, without any derogation even in private contracts. Migrant workers should have access to remedies, including in cases of violence and physical, mental or sexual abuse by employers, failure to pay wages and unlawful dismissal;**

**(k) Calls on States to end the criminalization of irregular migrants and to closely examine the demand and reasons for such migration. The Secretary-General also encourages States to take steps to end immigration detention and implement alternatives measures to detention for irregular migrants, and to review detention periods in order to avoid excessive detention of irregular migrants. Children should not be detained based on their migratory status or irregular entry into the country;**

**(l) Calls on States to recognize that migrants, particularly low-skilled, temporary and irregular migrants, have often been specifically locked out of development, and therefore to ensure that the situation of migrants is visibly disaggregated through the emerging post-2015 development agenda, as well as in the context of national development plans;**

**(m) Recommends the urgent development of relevant, valid and reliable knowledge on migration and human rights issues, including through the collection of data disaggregated on the basis of sex, age and legal status, while ensuring that such data-collection activities are in accordance with international standards on data protection and the right to privacy;**

**(n) Calls on States to develop human rights indicators on migration, in partnership with all relevant stakeholders including migrants themselves, in order to improve their capacity to design, implement and monitor human rights-based migration policies;**

**(o) Encourages States to enhance dedicated attention to the human rights of all migrants within the governance of international migration at the global, regional and national levels, in recognition of the fact that migration is fundamentally a human phenomenon and of the need to improve international cooperation and dialogue in this regard.**